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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,867	02/27/2004	Steven G. Simon	8546/84811	7215
22242 7590 09/12/2008 FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER RUHL, DENNIS WILLIAM				
ART UNIT 3689		PAPER NUMBER		
MAIL DATE 09/12/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/788,867

Applicant(s)

SIMON ET AL.

Examiner

Dennis Ruhl

Art Unit

3689

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 72, 74-89 and 93-100 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 72, 74-89 and 93-100 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date 6/10/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicant's response of 6/13/08 has been entered. The examiner will address applicant's remarks at the end of this office action.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 72,74,75,77-79,81-87,89,93,95,96,98,99,100, are rejected under 35 U.S.C. 102(e) as being anticipated by Griner et al. (6917566).

For claims 72,81,89,98,100, Griner discloses an input processor 131 that processes received audio signals and outputs a processed signal. The input processor is fully capable of being connected to a "front house console" to receive an audio signal as claimed. Processor 131 is fully capable of this function because of the fact that it is designed to receive audio signals, see the figures. The input processor is disclosed as outputting a processed signal as claimed. See column 5, lines 41-43. The computing device is interpreted to be 132, which has a 1st hard drive 133. Processed audio signals are stored as claimed by computing device 132 and it is also disclosed as creating secondary event files (the claimed segment files). See column 6, line 48 to column 7, line 5. With respect to the recitation that the segment files includes a song, see column 9, lines 17-30 where this is disclosed. Also, the files themselves are not a structural

part of the apparatus so this limitation really does not define anything more to the fact that there are segment files (secondary files of Griner). The fact that Griner discloses secondary event files satisfies the claimed limitation of segment files. The backup recorder is 410 and it is disclosed that the backup recorder can record the audio signals before they are processed by processor 131 or after they are processed by 131. See column 6, lines 33-35. When the backup recorder stores the processed signals from processor 131 (step 506), the backup recorder is coupled to the processor as claimed. The master recorder (cl 81) is any of the recording devices 310 in recording module 300 that each contain a high capacity hard drive, see column 5 line 58 to column 6, line 9. The master recorder is directly coupled to the input processor via the editing module. For claim 89, the language of "for downloading via the network" is directed to the intention of the ability to format a file. This is not taken as a step of downloading and is just interpreted to be functional language. Griner products formatted segment files. This ability is present in Griner.

For claim 74, Griner discloses a mixer 120.

For claim 75, see column 5, lines 39-52 where the claimed limitation is disclosed. The input processor converts the audio signal by using an A/D converter as claimed.

For claims 77,99, the computing device is fully capable of receiving a break as claimed. All one has to do is interrupt the audio signal and a break has been produced. The computing device of Griner is fully capable of performing the functional language that is claimed. The computing device is also inherently configured to create segment files in response to a break. This is because one can start and stop the recording of the

event in response to a break if one wanted to. Also see column 11, lines 25-44 where this limitation also appears to be satisfied by a technician using track delimiters, which are recognized by the system so that discrete tracks are recorded.

For claims 78,79, these claims are directed to non-functional descriptive material because reciting who the break is provided by, is not further reciting anything more structurally to the claimed system. These claims are apparatus claims and these claims are directed to the intended use of the apparatus and this language does not result in a structural difference from the prior art.

For claims 82-87, the claimed media receptacle(s) (duplicator(s)) is satisfied by Griner because the recorders 320 are disclosed as recording to CDs. This requires a media receptacle as claimed so that the CD can be burned. The claimed duplicator is claim 85 is also satisfied by Griner because the recorders duplicate (record) the audio files.

For claim 93, structurally what is claimed is that the computing device includes a server. This is interpreted to be the actual processor of the computing device of Griner. This satisfies what is claimed. The language of "that operates a website on the network" is language directed to the intended use of the server in a method sense; however, the instant claims are apparatus claims and this language does not define anything more than a server. There are no actions occurring in apparatus claims because it is not a process type of claim, so the server cannot be interpreted by the examiner to be operating anything.

With respect to claims 95,96, the language of "wherein the computing device is configured to process payments" has been considered to the extent that this reads on a calculator function of a computer. The term "processing payments" is broad and can be a person using the computing device to add numbers together to arrive at a total for a sale. The language about "in exchange for information...the performance" is not reciting any structure and is directed to things that may be done by people and is not related to the system claimed. A person may receive information from an attendee; use the computer to arrive at a total. What is claimed is just the ability to "process" a payment, which is broad language, satisfied by using a computer as a calculator, something that is necessarily present in the functional ability of any computer such as the computing device of Griner. For claim the information claimed is directed to non-functional descriptive material.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 76,80,88,94,97, are rejected under 35 U.S.C. 103(a) as being unpatentable over Griner (6917566).

For claim 76, Griner does not disclose that there is an equalizer in the input processor. Griner discloses that there is an equalizer in the editing module 200, as was stated and argued by applicant. The minor difference of locating the equalizer in the input processor versus the editing module of Griner is something that would have been obvious to one of ordinary skill in the art and involves nothing more than ordinary skill in the art. This is just moving the equalizer of Griner from the editing module to the input processor. The is just reciting a new location for the equalizer where that equalizer still performs the same function as it did when located in the editing module 200. Simply rearranging the system and moving parts around with no showing of unexpected results is something that is considered to be obvious to one of ordinary skill in the art.

For claim 80, Griner discloses editing software that is in the editing module 200. Not disclosed is that the editing software is in the computing device. The minor difference of locating the editing software in the input processor versus the editing module of Griner is something that would have been obvious to one of ordinary skill in the art and involves nothing more than ordinary skill in the art. This is just moving the software of Griner from the editing module to the input processor. The is just reciting a new location for the editing software where that software still performs the same

function as it did when located in the editing module 200. Simply rearranging the system and moving parts around with no showing of unexpected results is something that is considered to be obvious to one of ordinary skill in the art.

For claim 88, not disclosed is that the duplicator is mounted in a vehicle. Taking into account that the disclosure of Griner discusses the fact that the invention is used for musical events or concerts and other such events, it would have been obvious to one of ordinary skill in the art to make the system of Griner portable so that it can be taken to different events in different locations. The examiner takes official notice of the fact that it is very well known in the art of event recording to have a mobile trailer or integrated vehicle/trailer that houses the recording hardware and electronics that are used to record or transmit a live event. This happens with major TV networks have trucks that travel from one event to another, such as the PGA golf events that are held in new locations as the season progresses. It is also very well known that TV stations send mobile trucks to events such as the Super Bowl that house all the electronics and recording/transmission equipment. When one of ordinary skill in the art is making the system of Griner portable, due to the size and amount of equipment involved, it would have been obvious to consider housing the equipment in a vehicle of some kinds, as is done with major TV networks. This would have been obvious to one of ordinary skill in the art.

For claim 94, not specifically disclosed is the MP3 format. The MP3 format is very well known to one of ordinary skill in the art and is a type of file format that one of ordinary skill in the art would have recognized as being usable with the invention of

Griner. Claiming the format is MP3, which is so widely well known and is an industry standard, is obvious to one of ordinary skill in the art. The language of "for downloading...at the venue" is another recitation directed to the intended use of the structural limitation that the format is MP3. This does not define any further structure to what has been claimed other than the MP3 format.

For claim 97, not disclosed is that the files are encrypted. Encryption of files is very well known and one of ordinary skill in the art could decide to encrypt files if they wanted to. This is well known and would have been obvious to one of ordinary skill in the art.

6. Applicant's arguments filed 6/13/08 have been fully considered but they are not persuasive.

With respect to the argument about the segment file including a song, see the rejection of record where this is addressed. Griner discloses this limitation. With respect to the backup recorder storing a processed signal, see the rejection of record where this is addressed. This is also disclosed in Griner. With respect to the equalizer, The minor difference of locating the equalizer in the input processor versus the editing module of Griner is something that would have been obvious to one of ordinary skill in the art and involves nothing more than ordinary skill in the art. This is just moving the equalizer of Griner from the editing module to the input processor. The argument is not persuasive. With respect to the editing software limitation, see the rejection of record where this is addressed. The minor difference of locating the editing software in the

input processor versus the editing module of Griner is something that would have been obvious to one of ordinary skill in the art and involves nothing more than ordinary skill in the art. This is just moving the software of Griner from the editing module to the input processor. The argument is not persuasive. With respect to claims 93-97, see the rejection of record where these limitations are addressed. With respect to the direct connection limitation that applicant argued for claim 98, the prior art satisfies what is claimed. A direct connection is present in Griner because the master recorder is directly coupled to the input processor via the editing module. The duplicator is present in Griner and would obviously be the recording devices that act to record or duplicate the audio files, this is readily apparent and obvious when reading Griner.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/
Primary Examiner, Art Unit 3689